

**OPINION**  
**50-47**

March 29, 1950 (OPINION)

ELECTIONS

RE: Initiative Petitions

This office is in receipt of your letter of March 27 relative to initiative petitions filed in your office.

The purpose of these petitions is to amend and reenact Section 57-3826 of the North Dakota Revised Code of 1943 as amended by Chapter 306, Laws of 1945, relating to exemptions for individuals from income tax, and Section 57-3827 of the North Dakota Revised Code of 1943, relating to exemption for fiduciaries from income tax, and to establish the basis for computing the tax upon joint returns of husband and wife.

You state that you have checked the sufficiency of these petitions and you find that they contain approximately 10,700 signatures and of this number over 6,500 represent signatures obtained during the months of June, July, August and September, 1948 or over a year and a half ago.

You state, "In view of the long period of time which has elapsed since the 1948 signatures were obtained with the likelihood that a goodly number of electors have changed their minds with respect to the subject matter and others have died or moved to another state, it would appear that the Secretary of State is in a rather questionable position to hold that the petition has been presented to him within a reasonable time prior to this years primary election."

Section 25 of the Constitution as amended by Article 26 of the Amendments provides as follows:

The first power reserved is the initiative. Ten thousand electors at large may propose any measure by initiative petition. Every such petition shall contain the full text of the measure and shall be filed with the Secretary of State not less than ninety days before the election at which it is to be voted upon."

Said constitutional amendment further provides that, "Each measure initiated by or referred to the electors, shall be submitted by its ballot title, which shall be placed upon the ballot by the Secretary of State and shall be voted upon at any state-wide election designated in the petition, or at a special election called by the Governor. The result of the vote upon any measure shall be canvassed and declared by the board of canvassers."

The last paragraph of said Article provides, among other things, "This section shall be self executing and all of its provisions treated as mandatory. Laws may be enacted to facilitate its operation, but no laws shall be enacted to hamper, restrict or impair the exercise of the rights herein reserved to the people."

Section 16-0111 of the N.D.R.C. of 1943 relating to initiative, referendum or recall petitions reads as follows:

No person shall sign any initiative, referendum, or recall petition circulated pursuant to the provisions of sections 25 and 202 of the constitution of this state, and of article 33 of the amendments of such constitution, unless he is a qualified elector. No person shall sign any such petition more than once and each signer shall add his residence, post office address, and the date of signing. Each copy of any petition provided for in this section, before being filed, shall have attached thereto an affidavit to the effect that each signature to the paper appended is the genuine signature of the person whose name it purports to be, and that each such person is a qualified elector. Any person violating any provision of this section is guilty of a misdemeanor."

It should be noted from the constitutional provision quoted that an initiated or referred measure shall be voted upon at any statewide election designated in the petition or at a special election called by the Governor.

The petitions under consideration provide among other things as follows: "That they be placed upon the ballot in the manner and form provided by law and shall be submitted to the qualified voters of the state of North Dakota for approval or rejection at the next statewide election to be held in the State of North Dakota following the filing of the petition."

The foregoing is the authority of the signers of a petition to their committee, namely that the petition shall be submitted at the next statewide election following the filing of the petition.

You state that 6,500 of these signatures were obtained during the months of June, July, August and September of 1948. The General Election of 1948 was on November 3rd. In order that a petition might be voted upon at the General Election in 1948, it would have to be filed not later than August 3rd, 1948. Since a large portion of these signatures were obtained in August and September, 1948, such petitions could not be filed in time for the General Election held in 1948. The next statewide election will be the Primary Election to be held on June 27, 1950.

We can find nothing either in the constitution or in the statutes which fixes a time when the petitions should be signed or that such signatures must be obtained within or after a certain fixed time. The only statutory provisions with reference thereto is that the signer of a petition must add his residence, post office address and date of signing.

You do not state that you have any evidence before you that any of the signers of these petitions have removed from the state, have died or have changed their minds. Nor do we believe it is the duty of the Secretary of State to make any investigation with reference to the possibilities as to whether the signers are alive, have moved or changed their minds. If you find that the petitions are regular upon

their face, that is as far as your duty requires you to go.

This office has previously held that initiative petitions should state the definite statewide election when the measure is to be voted upon and the petitions under consideration provide specifically that they shall be voted upon at the next statewide election to be held in the State of North Dakota following the filing of the petition.

It is the opinion of this office, therefore, that these petitions appear to be regular on their face since they have the required number of signatures and include the details required by Section 16-0111, and therefore, it would be your duty to receive and file the same.

WALLACE E. WARNER

Attorney General